

REMARKS

This paper is filed in response to the official action dated November 15, 2007. This paper is timely-filed in view of the accompanying petition for extension of time and payment of the requisite fee. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed, or which should have been filed herewith, to our Deposit Account No. 13-2855, under Order No. 30105/32001A.

Claims 11-27 are pending in the application, but claims 25-27 have been withdrawn from consideration.

Claims 11-13 and 20 have been amended to address matters of form. No new matter has been added.

The bases for the claim rejections are addressed below in the order presented in the official action. Reconsideration is solicited in view of the accompanying amendments and the following remarks.

CLAIM REJECTIONS – 35 U.S.C. §112, 2ND PARAGRAPH

Claims 11, 13, 14, and 20 have been rejected under 35 U.S.C. §112, 2nd paragraph, as assertedly indefinite. The Applicants respectfully submit that these rejections have been overcome in view of the accompanying amendments.

CLAIM REJECTIONS – 35 U.S.C. §102(e)

Claims 11-14 have been rejected as anticipated by Gardiner, U.S. Patent No. 6,136,339.

The rejections under 35 U.S.C. §102(e) are improper because Applicants have demonstrated their possession of the claimed invention prior to the August 21, 1998, filing date of Gardiner '339 as corroborated by the Declarations of David J. Barnes dated June 19, 2002, and February 3, 2004, which were previously filed in this application and in parent application no. 09/175,748 (now abandoned).¹ However, the Applicants are claiming the same invention claimed in Gardiner '339. Accordingly, the only (presumptively) proper basis for rejecting these claims is under 35 U.S.C. §102(g), but an interference proceeding must be held in order to determine priority of invention.

¹ Copies of the Declarations are attached hereto as Attachments A and B.

In view of the above comments, the Applicants respectfully submit that an interference should be declared as requested in the attached Request for Interference, which was previously filed in this application and in parent application no. 09/175,748 (now abandoned).² Such action is earnestly solicited.

CLAIM REJECTIONS – 35 U.S.C. §103(a)

Claims 15-24 have been rejected as variously obvious over Gardiner, '339 in view of Hastings et al., U.S. Patent No. 6,224,871, Ribnicky et al., U.S. Patent No. 6,893,627, Brantman, U.S. Patent No. 4,687,782, Michnowski, U.S. Patent No. 4,832,971, Gardiner, U.S. Patent No. 5,817,329, Riley, U.S. Patent No. 5,976,568, and Ecker, U.S. Patent No. 3,894,148.

It cannot be demonstrated that the primary reference (Gardiner, '339) is available as prior art against the pending application without conducting an interference to determine priority of invention. In view of this deficiency, there is no basis for maintaining the asserted obviousness rejections at this time.

RENEWED REQUEST FOR INTERFERENCE

The Applicants again reiterate their request for the declaration of an interference between this patent and Gardiner, '339.

CONCLUSION

Should the examiner wish to discuss the foregoing, or any matter of form or procedure in an effort to advance this application to allowance, she is respectfully invited to contact the undersigned attorney at the indicated telephone number.

Respectfully submitted,

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² A copy of the Request is attached hereto as Attachment C.